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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

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Statutes of Limitation

Assessment of State Sales Taxes

There appear to be no limitations of time set by statute restricting the assessment of sales taxes by the taxing authorities in at least ten states.

Statutes in Iowa and North Dakota specifically provide that the provisions of the respective codes relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine or enforce the collection of any sales tax or penalty.¹

In Mississippi, Oklahoma and Utah, sales taxes are required to be assessed and collection of the taxes begun within three years from the date the return is filed. If no return is filed, the tax may be determined, assessed and collected at any time. Likewise, in these three states, in the case of a false or fraudulent return with intent to evade the tax, the amount of the tax due may be determined, assessed and collected at any time after it becomes due.² Somewhat similar provisions exist in Colorado, where sales taxes, interest and penalties are not to be assessed

or collected more than three years after the date on which the tax was payable and where, in the case of a false or fraudulent return with intent to evade the tax, the tax, interest and penalties may be assessed or collected at any time.³ In the State of Washington, assessments and corrections of assessments may be made at any time within four years after the close of the tax year.⁴ The Alabama Department of Revenue has indicated that assessments of sales taxes are not barred until after five years from the date they are due.⁵ Illinois provides for a three-year limitation on sales tax assessments except those related to a fraudulent return.⁶ A three year rule is also observed in the enforcement of the North Carolina sales tax, where returns have been duly filed and where no fraudulent attempt to evade the tax may be established.⁷

With regard to deficiency assessments, California and Michigan provide a three-year limitation related to the time of the filing of the return, while the Missouri statute contains a two-year limitation.⁸

NOTE: The references below are to the respective volumes of the STATE TAX REPORTER (formerly known as THE CORPORATION TAX SERVICE.)

¹ Iowa, ¶ 62-107; North Dakota, ¶ 63-006.

² Mississippi, ¶ 62-107; Oklahoma, ¶¶ 89-215, 89-216; Utah, ¶ 62-106.

³ Colorado, ¶ 57-106.

⁴ Washington, ¶ 62-104.

⁵ Alabama, ¶ 67-101.02.

⁶ Illinois, ¶ 62-115.

⁷ North Carolina, ¶ 63-000.013.

⁸ California, ¶ 62-105; Michigan, ¶ 62-135; Missouri, ¶ 62-109.

Domestic Corporations

Alabama.

Petition for writ of mandamus for inspection of corporate books denied where not made bona fide and made to annoy the corporation and destroy its business. The evidence showed that the petitioner, a stockholder, and the corporation were competitors in business. The evidence showed that his stock was properly transferred on the books and that he attended and participated in a meeting of the stockholders, participated in the adoption of by-laws and a resolution not to pay dividends until all debts were liquidated. The statute conferred on stockholders of the corporation, "The right of access to, and of inspection and examination, in person or by agent, of the books, records, and papers of the corporation at reasonable and proper times." Code of 1940, Title 10, Sec. 34. Petitioner had demanded and received two financial statements from the company. After it learned he had displayed these to an employe, alleged the corporation was insolvent and suggested he obtain other employment, and had also exhibited the statements to competitors and intimated it would soon go out of business, the corporation refused to allow petitioner to make a personal inspection of the books and records of the corporation or to have an auditor make such examination and statement. The petitioner then sought and obtained in the county court a peremptory writ of mandamus permitting such inspection at reasonable times. The Supreme Court of Alabama noted that the stockholder's right of inspection "is not without qualifications. It is well settled that this right cannot be exercised for improper or unlawful purposes, detrimental to the corporation, and its other stockholders." The Supreme Court of Alabama reversed the judgment of the lower court and rendered judgment denying the writ and dismissing the petition, concluding "that the demand for examination and audit of the books was not made bona fide for lawful purposes but for the purpose of annoying the corporation and its officers, and crippling and destroying the petitioner's competitor and its business." *Hutson et al. v. Brown*, 26 So. 2d 907. S. A. Lynne of Decatur, for appellants. Julian Harris and Norman W. Harris of Decatur, for appellee.

Delaware.

Chancery Court construes charter provision for election of minority of board of directors. A major issue before the Court of Chancery, New Castle County, concerned the construction of the following language of defendant corporation's certificate of incorporation: "The holders of the Common Stock Series B, shall have the right by the vote of a majority in number of shares of the Common Stock Series B issued and outstanding to elect a minority in number of the full Board of Directors." The Court concluded that the quoted language "requires a majority in number of the issued and outstanding shares to be voted before the Class B directors can be elected, but I also conclude that the same language requires successful nominees for Class

B directors to receive only a majority in number of the shares voted." *Investment Associates, Inc. et al. v. Standard Power and Light Corporation et al.*, Court of Chancery, New Castle County, August 16, 1946. John J. Morris, Jr., of Hering, Morris, James & Hitchens of Wilmington (Hays, Podell & Shulman of New York City, of counsel), for petitioners. Howard Duane of Wilmington (Murray Taylor of Seibert & Riggs and H. Preston Coursen of Pruitt, Hale & Coursen of New York City, of counsel), for defendants. Commerce Clearing House Court Decisions Requisition No. 361013; 48 A. 2d 501.

New Jersey.

Stockholder, although a competitor, granted writ to inspect corporate books and records, under certain restrictions. Relator was a stockholder and also a former director, secretary and treasurer of respondent company. He sought a writ of mandamus to compel the corporation and its president to permit him, with the aid and assistance of his attorney and accountant, to make an inspection and examination of all books, records and papers of the corporation. After relator's resignation as secretary and treasurer, he had gone into the hardware business, which was the business conducted by respondent company, and continued to conduct that business. The Supreme Court of New Jersey ordered a peremptory writ of mandamus to issue, with costs, with the provision that, upon notice, respondents might apply for the imposition of such terms as might be necessary to prevent disclosures of the trade or business secrets of the corporation to its competitors, and safeguard the interests of the corporation and all of its stockholders. The court regarded the fact that relator was engaged in a similar business and was a competitor of respondent corporation as not sufficient to bar him from proper relief, where an inspection of the corporation's books was necessary to accord him adequate information. *Wyckoff v. Hardware Supply Co. et al.*, 46 A. 2d 669. Kenneth J. Dawes of Trenton, for relator. William Henry Lawton of Trenton, for respondents.

Temporary injunction granted where purposes for which merging corporations were formed were dissimilar. Where steps had been initiated in order to effect the merger of two corporations, the Court of Chancery ordered the issuance of a temporary injunction upon the complaint of stockholders of one of the companies, upon a showing that the two corporations were not organized "for the purpose of carrying on any kind of business of the same or a similar nature" within the intentment of the statute. One company was engaged in the distribution and sale of safety razors and blades and the other manufactured and sold pens, pencils, writing devices and writing utensils. Noting that the enterprises were dissimilar, the court concluded: "I entertain the impression that the basic and fundamental legal right of these corporations to merge is of itself sufficiently controvertible to warrant a preliminary injunctive order." *Imperial Trust Co. et al. v. Magazine Repeating Razor Co.*, 46 A. 2d 449. Pitney, Hardin, Ward & Brennan of Newark (Donald B. Kipp of Newark,

and Alexander C. Dick of New York City, of counsel), for complainants. Milton, McNulty & Angelli of Jersey City (John Milton of Jersey City, and Grider D. Patterson of Chicago, Illinois, of counsel), for defendant.

New York.

Sec. 61-b, Gen. Corp. Law, requiring plaintiff in derivative suit to give security for expenses under certain circumstances, ruled inapplicable to actions pending at time of re-enactment of section in 1945. In *Shielcrawt et al. v. Moffett et al.*, 294 N. Y. 180, 61 N. E. 2d 435, (The Corporation Journal, June, 1945, page 366), the Court of Appeals of New York ruled that Sec. 61-b of the General Corporation Law, permitting a corporate defendant to require plaintiffs in a derivative suit to give security for expenses under certain circumstances related to the amount of stock held, was inapplicable to an action pending when the section went into effect. At approximately the time this decision was rendered, the Legislature re-enacted Section 61-b, using identical language, however, except for a formal change in reference to a section which had been renumbered. In the present suit the appellant stockholders contended that, by the re-enactment, the Legislature evinced an intent to make the section applicable to all pending actions. The New York Supreme Court, Appellate Division, Fourth Department, examined the circumstances surrounding the re-enactment of Section 61-b by Chapter 869, Laws of 1945, which also added a new Article 6-A to the General Corporation Law, entitled "Reimbursement of Litigation of Expenses of Corporate Officials." A section of this chapter providing that it should "apply to payment or assessment of expenses incurred in actions or proceedings pending at the time this act shall take effect, or in which appeal is thereafter taken, and in actions or proceedings commenced after this act shall take effect," was regarded by the court as so obviously relating "to the payment or assessment of expenses provided for in Article 6-A, omitting any reference to the subject of security for expenses provided for in Section 61-b, that the problem arising here is almost identical with the problem which the Court of Appeals considered in the *Shielcrawt* case. The test to be applied here is the same as laid down in that case and the same solution of the problem necessarily follows." The court concluded that Section 61-b did not apply to pending actions. It overruled a contention of appellants that in any event they were entitled to security for prospective expenses as distinguished from those incurred prior to the original enactment of Section 61-b, concluding that "the granting of security for prospective expenses could be just as much an interference with antecedent rights as a granting of security for expenses for any other period." An order denying a motion of the corporate defendant to compel the plaintiffs to furnish security pursuant to Section 61-b of the General Corporation Law was affirmed. *Mahler v. Trico Products Corporation et al.*, 63 N. Y. S. 2d 168. Kennefick, Cooke, Mitchell, Bass & Letchworth of Buffalo, for appellant. Hays, Podell & Shul-

man of New York City and Moore & Bassett of Buffalo, for respondents.

Rhode Island.

Surviving directors of dissolved corporation, as trustees appointed by equity court, ruled empowered to execute deed conveying title to real estate of company more than three years after the dissolution. Complainants were the surviving directors of a Rhode Island corporation which had been dissolved by action of the stockholders. A decree of the Superior Court of Providence and Bristol Counties had directed the dissolution and a distribution of the assets pro rata among the stockholders. More than the statutory period of three years for the continuation of corporate existence provided by G. L. 1938, chap. 116, art. II, sec. 63, had passed when the surviving directors, the complainants, entered into an agreement to sell respondent certain corporate real estate which remained unliquidated and in this action they sought specific performance of the contract. The following question was certified to the Supreme Court of Rhode Island: "Can the surviving directors of a dissolved corporation after a lapse of three years convey title to its real estate by deed?" The court, after an examination of the facts and circumstances, reached the conclusion that the complainants, as trustees, under the decree of the lower court were in a position to execute a deed conveying to the respondent a valid and marketable title to the real estate formerly owned by the dissolved corporation. *Di Prete et al. v. Vallone*, 48 A. 2d 250. Michael DeCiantis of Providence, for complainants. Ralph Rotondo of Providence, for respondent.

Foreign Corporations

Alabama.

Foreign corporation, engaged in preliminary steps which amounted to furtherance of interstate commerce, ruled not doing business so as to be required to be qualified. Plaintiff Delaware company, not licensed in Alabama, entered into a contract with defendant Hamilton, accepted at the company's Winona, Minnesota, place of business, for the shipment of merchandise from that place to Hamilton in Alabama. This suit was brought to recover a balance due. It was contended by the defendant that plaintiff was transacting business in Alabama without being qualified and that the contract was void under the Alabama law. The Court of Appeals of Alabama, in examining the purported evidence of doing business by the plaintiff in Alabama, concluded that a foreign company, engaged in the manufacture and sale of merchandise, was not to be regarded as doing business so as to be required to be qualified where it had an employee in the state for the purpose of interesting persons in becoming customers or for the purpose of checking public records to obtain information on persons who had signed contracts as sureties for prospective cus-

tomers and to mail such contracts as might be delivered to him, together with information so obtained through such investigations to the home office in Minnesota for approval. The court regarded these activities as amounting "to nothing more than incidental preliminary steps" and that if the sales were perfected by orders approved in Minnesota, "then such steps are preliminary to an essentially interstate business to which our laws could not properly apply in any of its phases." A judgment for the defendant in the lower court was reversed. *J. R. Watkins Co. v. Hamilton et al.*,* 26 So. 2d 207. Taylor & Jeffrey of Birmingham, for appellant. Arthur Fite of Jasper, for appellees.

* The full text of this opinion is printed in the *State Tax Reporter*, Alabama, page 315. (Formerly known as *The Corporation Tax Service*.)

District of Columbia.

Service of process on sales representative of correspondence school corporation set aside on ground company was not doing business. Service of process upon an Illinois correspondence school, the appellee corporation, was made in the District of Columbia by serving its sales representative. The United States Court of Appeals for the District of Columbia, after an examination of the contract between the corporation and the sales representative, named Owens, observed: "It appeared clearly that Owens was an independent contractor. He personally bore all expense which he incurred and was not in any way subject to the control of the appellee as to the time and manner of soliciting students for it. He received a stipulated commission for all business forwarded by him and accepted by the appellee at its office in Chicago." The court concluded that the company was not doing business in the District and that service upon the sales representative did not bring it before the court. *Read v. LaSalle Extension University*,* U. S. Court of Appeals for the District of Columbia, June 28, 1946. Richard O. Read, pro se, submitted on the brief, for appellant. Warren E. Miller, for appellee. Commerce Clearing House Court Decisions Requisition No. 359157; 156 F. 2d 575.

* The full text of this opinion is printed in the *State Tax Reporter*, District of Columbia, page 309.

Michigan.

Foreign corporation, operating under contract to sell entire output of Michigan company, ruled not subject to service of process where former's employees conducted activities in state incidental to main purpose of corporate existence. One of the defendants was an Illinois corporation which resisted service of process upon it. This company had entered into a contract with a Michigan company and was granted the exclusive right to sell the entire output of the Michigan company on a commission basis. Plaintiff argued that defendant was doing business in Michigan so as to be amenable to service of process

because of this exclusive sales contract and the commissions received by the company on sales in Michigan, because of visits by an employee of the company to Michigan to assist in obtaining an "E" flag for the Michigan company, because of arrangements between the two companies whereby the Illinois corporation paid for technical services of officers and employees of the Michigan company in connection with sales under the contract and because of the continual visits of the salesmen of the Illinois company to Michigan and the latter's investigation of complaints regarding the quality of the goods sold. The Supreme Court of Michigan, however, concluded that the record was clear that the Illinois corporation "did not carry on activities in Michigan sufficient to justify the conclusion that it was doing business within this state." The court regarded the activities of the company's officers and employees in Michigan as, "at most, incidental to the main purposes of its corporate existence." *Hellman v. Ladd et al.*,* 23 N. W. 2d 244. Anthony Nelson of Detroit, for appellant. Hill, Hamblen, Essery & Lewis of Detroit, for appellee.

*The full text of this opinion is printed in the *State Tax Reporter*, Michigan, page 315.

New York.

Wages of nonresident, employed by foreign corporation doing business in New York as an interstate common carrier, earned and payable outside New York, held subject to attachment in New York to the extent of 10% thereof. The following question was certified to the Court of Appeals of New York: "Are the wages of a nonresident, employed by a foreign corporation, doing business in New York as an interstate common carrier, which are earned and payable outside of New York, subject to attachment in New York by virtue of Section 916 of the Civil Practice Act?" The court concluded that the question should be answered as follows: "Yes, to the extent of 10% thereof." *Morris Plan Industrial Bank of New York v. Gunning et al.*, 295 N. Y. 324, 67 N. E. 2d 510. Eugene Underwood and Herbert M. Lord of New York City, for appellant. Rutger Bleecker Miller, amicus curiae of New York City, in support of appellant's position. John J. Dwyer and Harold H. Kissam of New York City, for respondent.

Court takes jurisdiction of controversy involving voting trust of foreign corporation, where voting trustees were residents of New York and carried on their business activities there. Petitioner was a large holder of stock in a New Jersey company, in connection with the stock of which a ten-year voting trust had expired in January, 1946. The controversy concerned the annual meeting scheduled for April 15, 1946. Petitioner sought to restrain the voting trustees from issuing any proxy to vote any shares outstanding in their names as voting trustees, except upon written demand of the registered owners of the voting trust certificates, and to have the voting trustees directed to deliver to such voting trust certificate holders proxies authorizing such persons as they might designate to vote the stock of which they

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were the beneficial owners. The Supreme Court, Additional Special Term, New York County, granted the petition, taking jurisdiction despite the facts that the company was a New Jersey corporation, its hotel was in that state and that the stockholders' meeting was scheduled to be held there. The court noted that the voting trustees were residents of New York and that their offices, the depositary and the transfer agent were all located in New York, and that the voting trustees had put in a general appearance. The court said: "Furthermore, unless this court should act, the likelihood exists that the stockholders will be without remedy at all. They cannot invoke the powers of the New Jersey courts, for the trustees are residents of and do business in New York, and are not subject to New Jersey process. I am therefore of the opinion that this court may, and in the exercise of its discretion should, assume jurisdiction of this proceeding. Having thus assumed jurisdiction, I believe that the petitioner is entitled to the equitable relief which he seeks in this proceeding. There is no doubt that the voting trustees, even though they own no stock themselves, may wage a proxy fight to continue in control of the corporation by electing a majority of the board of directors. They may not, however, withhold from beneficial owners of stock, to whom they owe a fiduciary duty, essential information as to the course they intend to pursue, or make a last-minute deviation from that course which will disenfranchise a majority of their cestuis que trust." The court found that the relief sought fell within the pattern of the protection which the legislature sought to extend to bondholders. *In re Atlantic City Ambassador Hotel Corp.*, 62 N. Y. S. 2d 62. Sylvester & Harris of New York City, for petitioner. McLaughlin & Stern of New York City, for Kirkeby, intervenor-petitioner. Bergerman & Hourwich, of New York City, for respondents Roosevelt, Vought and Merriman.

Ohio.

Ohio court rules term "employee" in New Jersey General Corporation Act, as applied to corporate pensions, would include the chairman of the board of a New Jersey company. In a derivative action brought in the Court of Common Pleas of Cuyahoga County, Ohio, the plaintiff, a stockholder in defendant New Jersey company, attacked the legality of (1) the salary paid by the company to the individual defendant, Tom M. Girdler, who was the chairman of the board of directors; (2) a payment of \$51,000 made in 1940 to the individual defendant in addition to his salary of \$175,000; and (3) a pension contract for the benefit of that defendant. The court, after an examination of the evidence, found no reason to disturb the salary of the defendant as fixed between him and the board of directors. As to the payment of the additional compensation of \$51,000, the finding was for the corporation and against the individual, as there was no express or implied contract for more than the fixed amount of \$175,000 and the additional payment had the characteristics of a gratuity and was paid without authority under the by-laws of the

company. The pension plan, as it affected the individual defendant, was upheld. The court found him, as chairman of the board of directors, to come within the legislative classification of an "employee" for whose benefit a pension plan might be adopted, observing: "We, therefore, believe that when the Legislature of the State of New Jersey used the term 'employee' in the General Corporation Act as applied to corporate pensions, they included executives as well as those in the more humble stations of employment, and that this would include the chairman of the board as well as the lowest laborer in the steel mill." The pension plan as entered into was found to be a valid, binding and enforceable contract. *Holmes v. Republic Steel Corporation et al.*, Court of Common Pleas, Cuyahoga County, August 9, 1946. J. W. Wursthorn and David Perris of Cleveland, for plaintiff. Thomas F. Patton of Cleveland, for defendant, Republic Steel Corporation. Jones, Day, Cockley & Reavis of Cleveland, for defendant T. M. Girdler. Commerce Clearing House Court Decisions Requisition No. 360891.

Pennsylvania.

Action dismissed against foreign railroad corporation, having no tracks in state and merely soliciting business from an office in Pennsylvania. Defendant Minnesota railroad corporation moved to dismiss an action as to it, on the ground that it was not doing business in the Eastern District of Pennsylvania and could not be served there. Plaintiff was injured in Minnesota through the alleged negligence of defendant. The latter maintained an office in Philadelphia, with a number of employees who were engaged in the solicitation of business. It had no tracks in Pennsylvania and owned no property there other than office equipment. Salaries were paid from its general office outside the state, and supplies were forwarded from that office. Sales were made of tickets to points on defendant's railroad through the purchase of tickets from local railroads which included a coupon ticket permitting the original purchaser to travel over defendant's lines. The United States District Court, Eastern District of Pennsylvania, granted the motion to dismiss the suit, indicating it did not regard the activities as sufficient to uphold service upon defendant as a corporation doing business in the district. *Murray v. Great Northern Railway Company et al.*, United States District Court, Eastern District of Pennsylvania, May 24, 1946. B. Nathaniel Richter of Philadelphia, for plaintiff. Harold Scott Baile of Philadelphia, for defendant. CCH Court Decisions Requisition No. 357801.

Taxation

California.

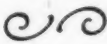
Ruling that property purchased in interstate commerce for shipment to Hawaii and stored in California due to war conditions, awaiting shipment, was not subject to property taxes, is affirmed by the

District Court of Appeal. In *The von Hamm-Young Company, Ltd. v. City and County of San Francisco*, (The Corporation Journal, December, 1945, page 48), the California Superior Court, City and County of San Francisco, ruled that property which was purchased in interstate commerce for shipment to Hawaii and stored in California due to war conditions awaiting facilities for shipment, was held not to be subject to personal property taxes in California. Upon appeal, the judgment has been affirmed by the District Court of Appeal, First District, Division 1, California. The court observed that "the sole issue involved in this case is the effect of the commerce clause (art. 1, sec. 8, cl. 3, U. S. Constitution) upon the power of the municipality to levy an ad valorem property tax upon these warehoused goods. Preliminarily it should be noted that the commerce clause was not enacted to assist those engaged in such commerce to evade a state tax burden merely because of the increase in the cost of doing business. *McGoldrick v. Berwind-White Co.*, 309 U. S. 33, 60 S. Ct. 388, 84 L. Ed. 565, 128 A. L. R. 876. However, it is necessary to examine the operation of the state statute as applied to the facts in each case to determine whether there is discrimination and injury to the particular property in interstate commerce." The court emphasized that the goods were warehoused in San Francisco owing to war emergency conditions over which the plaintiff had no control. "The articles," said the court, "were desperately needed in Hawaii; were intended for Hawaii and were continued on their journey to Hawaii as soon as space was available—some in a few days and for some of the articles shipping facilities were not available for a few months. The storage of the goods 'enroute' instead of immediate transshipment was not plaintiff's voluntary act and resulted in no profit to plaintiff but in a distinct loss in storage, cartage and hiring expediting employees in San Francisco while seeking allocations of cargo space in which to continue the goods forward to their intended destination. Only by such storage could the necessary commerce be carried on in the emergency period, and the warehousing was solely to further the interstate transportation of the goods as shown by the record in this case. Consequently the evidence is ample to support the findings and fully protects the judgment. Of course it is possible that the owner of property, even in a wartime emergency period, might attempt under the guise of the interstate commerce rule to evade a just local tax, but such fact does not appear in this case." *The von Hamm-Young Company, Ltd. v. City and County of San Francisco*,* 170 P. 2d 940. Robert W. Kenny, Atty. General, and John L. Nourse, Deputy Atty. General, and John J. O'Toole, City Attorney, and Walter A. Dodd, Chief Deputy, City Attorney, of San Francisco, for appellant. Brobeck, Phleger & Harrison of San Francisco, for respondent.

* The full text of this opinion is printed in the *State Tax Reporter*, California, page 3187. (Formerly known as *The Corporation Tax Service*.)

Pennsylvania.

Intangibles of qualified foreign corporation, authorized to do both a real estate and holding company business in Pennsylvania, ruled required to be included in ascertaining tax-base value of its Pennsylvania franchise. In *Commonwealth of Pennsylvania v. Eaglis Corporation*, 56 Dauphin Co. Reports 227, (The Corporation Journal, April, 1945, page 333), the Court of Common Pleas, Dauphin County, ruled that a qualified foreign holding company, conducting all of its business in Pennsylvania, except the collection of rents on property in another state, where informal directors' meetings were held, was doing business so as to be liable for the franchise tax. In appealing to the Supreme Court of Pennsylvania, the defendant corporation conceded its liability for the franchise tax but complained of the value ascribed to the franchise upon which the tax was calculated. It contended that only its tangible assets in Pennsylvania, consisting of real estate, should be included in valuing its capital stock for the purpose of determining the value of the franchise subject to tax. The Commonwealth, however, answered that the total assets of the corporation, tangible and intangible, were essential to the authorized corporate functions and should, therefore, be included in the incidental valuation of its capital stock. The principal question, therefore, was whether the taxpayer's intangibles should have been included in ascertaining the tax-base value of the Pennsylvania franchise. The court, stressing that the defendant was authorized to do not only a real estate and investment but also a holding company business and that the intangibles which it owned, held, managed and controlled from its office in Pennsylvania were incident to the exercise of its franchise as a holding company, dismissed the defendant's appeal and sustained that of the Commonwealth. *Commonwealth v. Eaglis Corporation*, 47 A. 2d 661. B. B. Bastian, Deputy Atty. General, and James H. Duff, Atty. General, for the Commonwealth. David B. Buerger and Smith, Buchanan & Ingersoll and McNeese, Wallace & Nurick of Harrisburg, William Booth of Pittsburgh and Ralph E. Evans of Harrisburg, for defendant. Commerce Clearing House Court Decisions Requisition No. 334237.



Appealed to the Supreme Court

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

October 1946 Term

CALIFORNIA. Docket No. 46. *Richfield Oil Corporation v. State Board of Equalization*, 163 P. 2d 1. (The Corporation Journal, February, 1946, page 88). Application of retail sales tax to sales of oil to foreign governments, delivered f. o. b. California port to buyer's tanker. Appeal filed, February 18, 1946. Further consideration of the question of jurisdiction postponed to the hearing of the case on the merits, March 25, 1946.

INDIANA. Docket No. 3. *Hewitt v. Freeman*, 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to non-residents through brokers. Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945. Reargued, October 14, 1946.

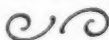
NEW YORK. Docket Nos. 29-30. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.*; *John T. Clark & Son v. McGoldrick et al.*, 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. Petition for certiorari filed, October 17, 1945. Certiorari granted, November 19, 1945. Argued, March 1, 1946. Restored to the docket and assigned for reargument before a full bench, April 22, 1946.

OHIO. Docket No. 75. *International Harvester Company v. Evatt, Tax Commissioner of Ohio*, 64 N. E. 2d 53. (The Corporation Journal, February, 1946, page 92.) State taxation of foreign corporations—Ohio franchise tax measured by volume of business done in Ohio. Appeal filed, March 29, 1946. Probable jurisdiction noted, May 6, 1946.

October 1945 Term

CALIFORNIA. Docket No. 1255. *West Publishing Co. v. McColgan*, 166 P. 2d 861. (The Corporation Journal, April, 1946, page 128.) Corporation Income Tax Act—application to foreign corporation engaged exclusively in interstate commerce. Appeal filed, May 23, 1946. Motion to affirm granted and judgment affirmed, June 10, 1946. (See page 192.) Petition for rehearing filed, June 28, 1946. Petition for rehearing denied, October 14, 1946.

* Data compiled from CCH U. S. Supreme Court Service 1946-1947.



Regulations and Rulings

CALIFORNIA—For income tax purposes, dividends from "regulated investment companies" are treated as are dividends from other corporations. If the dividend is paid from income, including capital gains, it is income to the recipient and fully taxable. (Letter of Franchise Tax Commissioner, State Tax Reporter, California, ¶ 8-939.) (*The State Tax Reporter was formerly known as The Corporation Tax Service.*)

IOWA—Deposits of a foreign corporation in banks outside Iowa and accounts receivable from customers residing outside the state have acquired a "business situs" or "commercial domicile" within Iowa and thus constitute "property of such company actually within the state" within the purview of Sec. 8423 when the chief office and manufacturing plant are located within the state. (Opinion of the Attorney General to the Secretary of State, State Tax Reporter, Iowa, ¶ 404.)

LOUISIANA—Movables brought into a parish or taxing subdivision subsequent to January first of the tax year are subject to assessment there. (Opinion of the Attorney General, State Tax Reporter, Louisiana, ¶ 20-701.) (*The State Tax Reporter was formerly known as The Corporation Tax Service.*)

NEW MEXICO—Since personal property is included in the valuation of shares of stock of banks, assessed against the stockholders, the personal property of a State or National Bank should not be separately assessed upon the tax rolls by the County Assessor. (Opinion of Attorney General to State Tax Commissioner, State Tax Reporter, New Mexico, ¶ 25-007.)

NEW YORK—The New York state corporate franchise tax accrues for Federal income tax purposes on the first day of a corporation's taxable year, and for years ending after June 30, 1945, the tax should be deducted at the rate of 4½ per cent. Amended Federal returns on Forms 1120 and 1121 should be filed to make the proper adjustment where the tax was deducted at the rate of 6 per cent for such taxable years. A check for the resulting deficiencies arising by reason of the smaller deductions should accompany the amended returns. (Special Ruling of Commissioner of Internal Revenue, State Tax Reporter, New York, ¶ 200-855.)

NEW YORK CITY—When a company engages a room for the purpose of accommodating its personnel visiting New York City, and pays for the room whether occupied or not, and has done so for a period in excess of 90 days, the company is a permanent resident and is not required to pay the New York City occupancy tax. (Bulletin of Special Deputy Comptroller, State Tax Reporter, New York, ¶ 220-284.)

OREGON—A "Little Townsend Bill" will be referred to the voters of Oregon at the November election. It provides for the imposition of a gross income tax of 3 per cent, for the purpose of providing revenue for a state old-age and disability pension fund.

Some Important Matters for November and December

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALASKA—Annual Corporation Tax due on or before January 1.—
Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January.
—Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and
January 20.—Domestic Corporations.

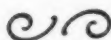
Application for license in connection with District Income
Tax due on or before January 1.—Domestic and Foreign
Corporations.

GEORGIA—Annual License Tax Report and Tax due on or before January 1.—Domestic and Foreign Corporations.

MISSOURI—Annual Franchise Tax, due on or before December 31 (formerly due May 15).—Domestic and Foreign Corporations.

NEW YORK—Second installment of Franchise (Income) Tax of Business Corporations due on or before November 15 (or within 30 days after notice, if given later than October 15; payable not later than January 15, in any event).—Domestic and Foreign Business Corporations other than real estate companies.

UNITED STATES—Fourth Installment of Income Tax imposed for the calendar year 1945 due on or before December 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.



The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York 5, N. Y.

What! We Need a Transfer Agent? Nonsense! The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

What Constitutes Doing Business. (Revised to June 1, 1946.) A 191-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside state and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employee suddenly found themselves in trouble.

Judgment by Default. Gives the gist of *Rarden v. Baker* and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employees as statutory representatives are sometimes left defenseless in personal damage and other suits.

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve The Journal in a permanent file, a special and very convenient form of binder will be furnished at cost (\$1.50).

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